DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
OF THE ARMY (CIVIL WORKS)

COMPLETE STATEMENT OF THE HONORABLE JOSEPH W. WESTPHAL ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)

BEFORE THE

SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

ON THE

HARBOR SERVICES FUND

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INTRODUCTION

Mr. Chairman and Members of the Subcommittee, I am Joseph Westphal, Assistant Secretary of the Army for Civil Works. I am here today to present information on the Administration's legislative proposal for the Harbor Services Fund and to answer your questions.

BACKGROUND

On 31 March 1998, the Supreme Court ruled that the Harbor Maintenance Tax (HMT) on exports was unconstitutional. In that ruling, the Court concluded that the HMT, which imposed a charge based on the value of the commercial cargo being shipped, constituted a tax on goods in export transit, and, therefore, violated the Export Clause of the Constitution. Because of this ruling, the HMT is no longer being collected on exports. Collection of the HMT on imports and domestic traffic continues, as required under the existing statutory regime. The United States has been under criticism from the European Union (EU), Japan, Norway, and Canada that the HMT violates the General Agreement on Tariffs and Trade (GATT), and the Supreme Court decision has heightened their interest in the HMT, as it relates to the GATT. Currently, the HMT issue is in the consultation phase of the World Trade Organization (WTO) dispute resolution procedure; however, the EU, the primary counterpart in these discussions, has not requested a dispute resolution panel at this time.

On 20 May 1998, Franklin Raines, Director of Office of Management and Budget (OMB) first proposed the Harbor Services Fund (HSF) to replace the Harbor Maintenance Trust Fund (HMTF). In a letter to the Chair and Ranking Member of the Senate and House Appropriations Subcommittees and to the Chair and Ranking Member of the Senate and House Authorization Committees, he suggested general principles for this fund.

I was given the task of preparing the Administration's legislative proposal to replace the HMT. On August 31, September 1, and September 2, 1998 I held outreach meetings with port, industry and trade interests. A summary of a draft legislative proposal was presented at that time. Subsequently, the legislative proposal was revised, in part as a result of input provided by the stakeholders at these meetings. The legislative proposal was then coordinated within the Administration and submitted to the Congress on April 30,1999.

GENERAL PRINCIPLES

The port and harbor system of the United States is critical to the national economy and to international trade. A secure funding mechanism is needed to ensure adequate funds are available for port and harbor development and for maintenance of the port and harbor system. The legislative proposal adheres to the following principles first articulated in OMB Director Raines letter.

- Satisfies the Supreme Court test for constitutionality. Establish a close link between revenue collected and services provided to vessels.
- Is consistent with the General Agreement on Tariffs and Trade and other U.S. international obligations.
- Is formulated on a nationwide basis.
- Causes no significant alteration of the existing U.S. port competitiveness and U.S. competitiveness with foreign ports.
- Provides funds for continued operation and maintenance of ports and harbors now funded by the HMT and also supports harbor construction activities.

These principles ensure that the Administration's proposal for the HSF is constitutional, equitable and sufficient to finance harbor activities.

BUDGET TREATMENT

The President's Budget for Fiscal Year (FY) 2000 is based on enactment of the Administration's legislative proposal for the HSF. The following summarizes the budget treatment of the proposal:

- Revenues and expenditures will be placed in a special account entitled Harbor Services Fund.
- Balances from the HMTF will be transferred to the HSF.
- Expenditures from the HSF account will be subject to annual appropriations.

- The proposal is deficit neutral up to the amount of prior year receipts – no pay as you go (PAYGO) offset. For scorekeeping purposes, the revenue will be treated as offsetting receipts.

The President's Budget for FY 2000 includes $951 million to come from the Harbor Services Fund; $258 million in the Construction, General account and $693 million in the Operations and Maintenance, General account. This budget treatment allows the Administration to support a higher level of spending for port and harbor activities than would have been possible in the absence of the proposal.

PURPOSES OF THE HSF

Three major types of activities will be funded from the proposed HSF, subject to appropriation. Following are comparisons of the activities funded under the HSF to those funded under the HMT.

Expenditures as existed under the HMT and continuing under the HSF

- 100 percent of the Corps operation and maintenance expenditures for Federal channel and harbor projects.
- Expenses incurred in the administration of the HSF.

Expenditures as existed under the HMT and reduced under the HSF

- Funding for expenditures by the St. Lawrence Seaway Development Corporation (SLDC), including SLDC rent payments will no longer be made.
- This legislative proposal reserves from the balances transferred from the HMTF such funds as may be necessary to implement legislation to establish the SLDC as a Performance Based Organization.

Additional proposed expenditures under the HSF

- The Federal share of construction costs of channel and harbor development projects.
- The additional costs to the Corps of maintaining the reserve capability of Corps dredges to perform dredging on Federal channel and harbor projects.
- Audit costs incurred in connection with administration of the user fee.
- The funding of up to $100 million per year for the dredging of berthing areas, the construction and maintenance of bulkheads, and credits toward the non-Federal shares of eligible Federal harbor development or O&M activities at ports where the average amount of the fee assessed during the three previous consecutive fiscal years exceeds the average Federal expenditure from the HSF at that port during the same three fiscal years by $10 million.

The dredging of Federal navigation channels would be the primary maintenance activity financed by the HSF, while the harbor development construction activity would primarily involve channel-deepening projects.

MECHANICS OF THE LEGISLATION

The assessment under the HSF is a user fee, not a tax. The fee is based on the harbor benefits and services users receive. The fee is assessed on the commercial vessel, not on its cargo.

Vessels are divided into four service categories (1) General, (2) Bulker, (3) Tanker and (4) Cruise. Ship size, movement frequency, and operational characteristics of particular vessels were the principal factors used to determine the level of harbor services required. Vessel capacity, expressed as vessel capacity units (VCUs), is the characteristic used to measure ship size. VCUs are a volumetric measurement of ship size.

The four vessel categories were chosen because each category has different operational characteristics and each requires a significant difference in level of services required based on extent of use of port system, channel reliability required, and the demand for new harbor development projects. VCU's are based on a vessel's Net Tonnage except on containerships and cruise ships where VCU's are based on Gross Tonnage to account for additional cargo (deck) and passenger space.

The user fees proposed in the legislation are as follows:

Vessel Category	**Rate of Fee (per voyage)**
Bulker	$0.12 per VCU
Tanker	$0.28 per VCU
General	$2.74 per VCU
Cruise	$0.12 per VCU

The harbor services fee would be collected once per voyage, with the fee levels calibrated based on the average number of port uses for each vessel category. For additional ease, the assessment of the fee would be made at the first U.S. port of entry as part of the vessel clearance process. This represents a significant change from the draft proposal in response to feedback from stakeholders. This change is intended to avoid impacts on the number of U.S. port calls made during a voyage. Attached to this testimony are examples that illustrate how these rates are used to compute the user fee and to compare the amounts collected to the HMT.

EXEMPTIONS AND EXCLUSIONS

The exemptions and exclusions in the proposed legislation mirror those contained in the legislation for the HMT. Exemptions in the proposed legislation include:

- Port use by vessels of the U.S. or any agency thereof.
- Port use for intraport movements.

- Vessels transporting commercial cargo from the mainland U.S. to Alaska, Hawaii, or any possession of the U.S., for ultimate use or consumption in Alaska, Hawaii, or any possession of the U.S.
- Vessels transporting commercial cargo from Alaska, Hawaii, or any possession of the U.S. to the mainland U.S. for ultimate use or consumption in the mainland U.S. (exception is Alaskan crude oil).
- Vessels transporting commercial cargo within Alaska, Hawaii, or possession of the U.S.
- Vessels transporting passengers operating solely within the state waters of Alaska or Hawaii and adjacent international waters.

The exemption for port use by the U.S. preserves the government's ability to accomplish governmental tasks in ports without interference or administrative burden. The exemptions pertaining to Alaska, Hawaii and the possessions of the U.S. acknowledge and protect the peculiar port-dependence of non-contiguous states and possessions of the U.S. These states and possessions, unlike the other 48 states, are critically dependent on domestic port shipments.

Exclusions are contained in the definition section of the legislation. The exclusions include ferries, vessels transporting fish not previously landed on shore, vessels on the Inland Waterway system, and vessels less than 3,000 gross tons. The minimum vessel size preserves the exclusion for vessels moving on inland and intracoastal waterways, and other small vessels for which the cost to administer the fee would be impractical.

RATE ADJUSTMENT

The proposed legislation provides for a periodic review of amounts collected to ensure that the fees charged fairly approximate the cost of services provided. The legislation also provides for the prospective adjustment of the rate of the fee for any one or more of the bulker, tanker, or cruise vessel categories of up to $0.05, or in the case of the general vessel category, by up to $0.25, as necessary to fairly approximate the cost of services provided to commercial vessels in each vessel category.

In addition the legislation provides that, if amounts appropriated in any fiscal year are less than the amount collected in fees for the prior fiscal year, then the rate of the fee for each vessel category shall be reduced in the year of the appropriation so as to result in collections not exceeding the total amount appropriated from the HSF for that fiscal year.

COLLECTION AND ADMINISTRATION

Regulations would be prescribed by the Secretaries of the Treasury and the Army, respectively, for collection and administration of the user fee.

Collection of fee - The Secretary of the Treasury would be responsible for prescribing regulations:

- To provide for the manner and method of payment and collection of the fee imposed by this legislation.
- To provide for the posting of bonds to secure payment of the fee.
- To exempt any transaction or class of transactions from the fee where the collection of the fee is not administratively practical.

Audit of fees - The Secretary of the Army be responsible for prescribing regulations:

- To provide for the remittance or mitigation of penalties and the settlement or compromise of claims.
- To provide for a periodic review of amounts collected under this legislation to ensure that the fees charged fairly approximate the cost of services provided to commercial vessels for port use.
- To provide for the adjustment of the rate of the fee as necessary to fairly approximate the cost of services provided to commercial vessels.
- Other regulations as may be necessary to carry out the purposes of this legislation.

CONCLUSION

To summarize:

- The Administration's proposal is a step forward to meet the needs of the ports and harbors of the United States, not only for operation and maintenance, but also to provide the needed revenue for channel improvement projects.
- The budget treatment of this proposal allows the Administration to support a higher level of spending for port and harbor activities than would have been possible in the absence of the proposal, and thereby reduces the backlog of these needed navigation improvements.
- This proposal places the costs of harbor services fairly and equitably on the users of these services, and remedies the constitutional problems of the HMT.

Mr. Chairman and Members of the Subcommittee, this concludes my testimony. This proposal is an important step in the dialogue among the Administration, Congress, and all of the stakeholders on this important issue. My staff and I stand ready to work with you on this matter in any way we can. I would be pleased to answer your questions.

Attachment (Examples)

ATTACHMENT - HARBOR SERVICES USER FEE DETAILED EXAMPLES

The examples present the amount of the new Harbor Services User Fee (HSUF) as compared to the old Harbor Maintenance Tax (HMT). Cargo values are shown <u>only</u> to make this comparison. The cargo value is needed to calculate the old HMT. Cargo value has no relation to the way the proposed fee is computed.

GENERAL: This is the major vessel category. Most of the vessel capacity is in containerships that operate on regular scheduled port calls. About 44% of all VCUs are in this category.

Example 1 - General

4,200 TEU Containership carrying $140 million in cargo in 6,000 TEU round-trip
VCU = 57,000 GT (Gross Tonnage)
Voyage: Northern Europe - Boston - New York - Norfolk - Northern Europe

This example shows a containership with multiple port calls on the East Coast. The vessel would be assessed $2.74/VCU x 57,000 VCU = $156,180 upon entering Boston for the entire voyage. The vessel operator would pay the fee.

The HMT for this voyage carrying $140 million in cargo in 6,000 TEU (round-trip) is $175,000 and the shippers pay it. This is equivalent to $3.07/VCU (or $29/TEU) for the entire voyage under the HMT compared to $2.74/VCU (or $26/TEU) under the HSUF.

Example 2 - General

4,800 TEU Containership carrying $190 million in cargo in 7,560 TEU round-trip
VCU = 65,000 GT
Voyage: Far East - Los Angeles - Seattle - Far East

This example shows a containership with multiple port calls on the West Coast. The vessel would be assessed $2.74/VCU x 65,000 VCU = $178,100 upon entering Los Angeles for the entire voyage. The vessel operator would pay the fee.

The HMT for this voyage carrying $190 million cargo in 7,560 TEU (round-trip) is $237,500 and is paid by the shipper. This is equivalent to $3.65/VCU (or $31/TEU) for the entire voyage under the HMT compared to $2.74/VCU (or $23/TEU) under the HSUF.

BULKER: About 16% of all VCUs are in this group. Bulkers are usually engaged in point to point trade having empty back hauls.

Example 1 - Bulker

Bulker carrying 50,000 mt (metric tons) of grain worth $5 million
VCU = 20,000 NT (Net Tonnage)
Voyage: New Orleans - Japan

This example shows a bulker entering New Orleans empty (ballast) and then sailing from New Orleans to Japan. The vessel would be assessed $0.12/VCU x 20,000 VCU = $2,400 at New Orleans and this fee would be paid by the vessel operator.

The HMT for this voyage carrying $5 million in grain is $6,250 and the shipper pays it. This is equivalent to $0.31/VCU (or $0.13/mt) under the HMT compared to $0.12/VCU (or $0.06/mt) under the HSUF.

The Panama Canal charge on this shipment is $78,385.

Example 2 - Bulker

Bulker carrying 100,000 mt of coal worth $5 million
VCU = 50,000 NT
Voyage: Norfolk - Japan

This example shows a bulker entering Norfolk empty (ballast) and then sailing from Norfolk to Japan. The vessel would be assessed $0.12/VCU x 50,000 VCU = $6,000 at Norfolk. The vessel operator would pay this fee.

The HMT for this voyage carrying $5 million in coal is $6,250 and the shipper pays it. This is equivalent to $0.125/VCU (or $0.0625/mt) under the HMT compared to $0.12/VCU (or $0.06/mt) under the HSUF.

TANKER: About 16% of all VCUs are in this category. Tankers are usually engaged in point to point trade to specific oil and chemical processing facilities and often have empty back hauls.

Tanker carrying 150,000 mt of crude oil worth $18 million
VCU = 50,000 NT
Voyage: Venezuela - Philadelphia

This example shows a tanker entering refining facilities in Philadelphia from Venezuela loaded with crude oil and then exiting from Philadelphia empty (ballast). The vessel would be assessed $0.28/VCU x 50,000 VCU = $14,000 at Philadelphia and it would be paid by the vessel operator.

The HMT for this voyage carrying $18 million in crude oil is $22,500 and the shipper pays it. This is equivalent to $0.45/VCU (or ($0.15/mt) under the HMT compared to $0.28/VCU (or $0.09/mt) under the HSUF.

CRUISE: About 24% of all VCUs are in this category. Cruise ships operate on a regular interval of port calls.

Cruise ship with $3 million in fares for 1200 passengers
VCU = 55,000 GT
Voyage: Vancouver - Ketchikan- Juneau - Valdez - Seward - Vancouver

This example shows a cruise ship with multiple port calls in Alaska departing and returning to Vancouver, Canada. The vessel would be assessed $0.12/VCU x 55,000 VCU = $6,600 entering Ketchikan for the entire voyage.

The HMT for this voyage having $3.0 million in fares for 1,200 passengers is $3,750. This is equivalent $0.07/VCU (or $3.13/passenger) for the entire voyage under the HMT compared to $0.12/VCU (or $5.50/passenger) under the HSUF.